

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 2.00, Section 2.09, Section 2.30, Section 3.00,  
Section 5.15, Section 5.37, Section 5.51, subsection (e) of Section 5.60,  
Section 7.00, subsections (a), (b)(12), (b)(19.5), (b)(28.5), (b)(53.8),  
(b)(68.2), (b)(72.5), (b)(84), (b)(170.5), (b)(171.6), (b)(181), and  
(b)(187.5) of Section 7.50, Section 27.80, and Section 700, and  
Add Section 1.54 and subsection (b)(4.5) and (b)(25.3) of Section 7.50, and  
Repeal subsection (b)(88) of Section 7.50  
Title 14, California Code of Regulations  
Re: Minor Regulatory Revisions and Cleanup

I. Date of Initial Statement of Reasons: June 11, 2009

II. Date of Pre-adoption Statement of Reasons: November 9, 2009

III. Date of Final Statement of Reasons: December 10, 2009

IV. Dates and Locations of Scheduled Hearings:

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|-----|---------------------|--|
| (a) | Notice Hearing:     | Date: August 6, 2009<br>Location: Woodland, CA       |
| (b) | Discussion Hearing: | Date: October 1, 2009<br>Location: Woodland, CA      |
| (c) | Discussion Hearing: | Date: November 5, 2009<br>Location: Woodland, CA     |
| (d) | Adoption Hearing:   | Date: December 10, 2009<br>Location: Los Angeles, CA |

V. Update:

There were no changes from the Initial Statement of Reasons regulatory language.

The Fish and Game Commission adopted the proposed regulations at its December 10, 2009 meeting.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Public comments received on this proposal and the Department's responses are listed in the attached Public Comments on Proposed Regulatory Changes and Department Responses document.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place with inconsistent regulations and ongoing enforcement issues.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(b) Impact on the Creation or Elimination of Jobs Within the State, the

Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

## **Informative Digest (Policy Statement Overview)**

This Department proposal is a combination of Department and public requests for Title 14, California Code of Regulations (CCR) minor revisions and cleanup for the 2009 triennial sport fishing review cycle. This proposal will repeal the license display requirement, clarify regulations for the take of saltwater species in inland waters, institute new grass carp retention measures, and minor additions to the special regulations. The Department has also determined that Title 14, CCR, has errors due to incorrect or missing Title 14 updates, incorrect cross-section references, typographic errors, and other regulatory problems that increase public confusion of the regulation's intent and regulation complexity.

For public notice purposes to facilitate Commission discussion, the Department is proposing the following changes to current regulations as discussed in the following paragraphs:

### **REPEAL OF DISPLAY REQUIREMENT OF LICENSE**

The “wear your license” requirement places a burden on anglers to wear their licenses while fishing and risk losing their licenses, while the benefit to DFG is minimal. The cost of a sport fishing license has increased from \$23.25 in 1994 to \$39.25 in 2009; therefore, it is a bigger expense today to the angler to replace a lost license, stamps and/or report cards.

Section 700(a) requires every angler to display their sport fishing license above their waist while fishing. This regulation was enacted in 1994 to increase license sales and allow wardens to check for compliance from a distance.

While license sales increased slightly in 1994, sales have declined since then. License sales figures have fluctuated over the years and show a slight declining trend. The increase in sales in 1994 can not be verifiably linked to the license display requirement.

The benefit to law enforcement has become irrelevant. Wardens have to check licenses anyway to verify that anglers possess the proper stamps and report cards and to verify that angler catch and effort are recorded on report cards according to regulations. Since the inception of the “wear your license” requirement, additional report cards for sturgeon, spiny lobster and abalone have been added. There are currently five report cards and four stamps that are required for certain areas or species throughout the State. Additionally, wardens need to examine each license to verify that the license belongs to the angler and that it is not simply a piece of colored paper.

### **Amend Section 700, hunting and fishing license possession and display regulations.**

– Remove the requirement to display the sport fishing license on an angler's outer clothing. This change was a public recommendation that was supported by enforcement to reduce public confusion and simplify regulations.

### **TAKE OF SALTWATER SPECIES IN INLAND WATERS**

Under current regulations there are not provisions allowing for the take of saltwater crabs in inland waters, although sport fishing for saltwater crabs in inland saltwater estuaries is a popular pastime for many sport fishermen. The problem is that many of

the popular sport crab fishing estuaries are anadromous waters which are closed to all fishing during much of the time that it is legal to take saltwater crabs.

Both Sections 7.00 and 7.50 state, “Unless otherwise provided, waters shown as open to trout and salmon fishing below, are open to fishing for other species” and “Unless otherwise provided, waters closed to trout and salmon fishing are closed to fishing for all other species”. These sections go on to list some exceptions to the closures, “except that these closures do not apply to fishing for amphibians (see Section 5.05), freshwater clams (see Section 5.20), crayfish (see Section 5.35), and lamprey (see Section 5.40), using fishing methods other than hook-and-line fishing.”

Sport fishermen often complain to the Department’s Law Enforcement Division (LED) when they cannot fish for crabs in these saltwater estuaries because of stream closures. The LED is proposing to allow take of saltwater species in inland waters under marine regulations under certain conditions.

Amend Section 2.00, general fishing methods.

- Allow for other fishing methods when authorized by regulations.

Amend Section 7.00, trout and salmon district general regulations and subsection 7.50(a) trout and salmon special regulations.

- Allow the take of saltwater clams, crabs, ghost shrimp and blue mud shrimp in inland saltwater areas when trout and salmon are prohibited under certain conditions with hoop nets and by hand. Rigid crab traps will not be allowed due to potential conflicts with listed salmonids. This will clarify the regulations, reduce public confusion and strengthen enforcement measures.

## NEW GRASS CARP RETENTION MEASURES

The regulation currently states that no grass carp may be taken or possessed at any time and that any grass carp inadvertently taken must be immediately returned unharmed to the water.

In 2002, Grass carp were discovered in Lake Siskiyou, Siskiyou County, during a routine electrofishing survey. Captured grass carp were tested and found to be fertile and able to reproduce. Due to the extensive reproductive capacity and voracious herbivorous feeding habits all grass carp should be removed from Northern California waters.

If Grass carp are able to escape Brown’s Pond and Lake Siskiyou, the potential for negative impacts on aquatic resources would be severe. The damages would be extensive and would further hinder the Sacramento River’s salmon populations.

Amend Section 5.37, statewide grass carp restrictions.

– Allow for an exception to the possession of grass carp and add reporting requirements in Siskiyou and Shasta counties similar to northern pike regulations to assist with eradication efforts.

## BODFISH CREEK ADDITION TO SPECIAL REGULATIONS

Bodfish Creek is a tributary to Uvas Creek in Santa Clara County. Uvas Creek is specifically listed under the Special Regulations as being closed to fishing year round

from the Highway 152 bridge up to Uvas Dam, but no reference is made to its tributaries. The General Regulations state at Section 7.00(e) that any body of water in Santa Clara County not called out by name in the Special Regulations is open from the last Saturday in April through November 15. Finally, to further complicate things, the confluence of Bodfish Creek is below the Highway 152 bridge, which could be interpreted to mean that all of Bodfish Creek is open from December 1 through March 7.

This discrepancy is confusing to anglers and nearly impossible to effectively enforce. Also a conservation measure is being proposed by Santa Clara County Parks (with support from DFG) for re-operation of an on-channel pond (previously known as Sprig Lake) as rearing habitat for juvenile steelhead.

To align with the steelhead protection of Uvas Creek, Bodfish Creek is proposed to be added in the Special Regulations.

Add subsection 7.50(b)(25.3), Bodfish Creek special regulations.

– Add subsection to contain the Bodfish Creek season dates, special regulations, and daily bag and possession limits moved from the general district regulations. This will help provide additional protection to native fishes and reduce public confusion.

**UPPER AMERICAN RIVER ADDITION TO SPECIAL REGULATIONS**

The Upper American River regulations in the General District Regulations, Section 7.00(b)(6), are proposed to be moved into the Special Regulations, Section 7.50, to place the upper and lower section of the American River in the same regulatory section.

Amend Section 7.00, trout and salmon district general regulations.

- moved upper American River and tributaries regulations into the Special Regulations and renumber the following subsections. This will help clarify the regulations and place all of the American River regulations in the same location.

Add subsection 7.50(b)(4.5), American River and tributaries above Folsom Lake special regulations.

– Add subsection the special regulations to contain the upper American River and tributaries season dates, special regulations, and daily bag and possession limits moved from the general district regulations. This will help clarify the regulations.

**OCEAN SALMON OPENERS FOR 2010**

The 2010 season openers for all areas below Horse Mountain and size limits were adopted by the Pacific Fishery Management Council in April 2009 but left out the Commission's 2009 salmon regulatory process to reduce the need for additional public notice.

Amend Section 27.80, ocean salmon regulations.

– Add 2010 season openers for all areas below Horse Mountain and size limits. This change will reduce public confusion and align state regulations with federal regulations.

**LAKE DAVIS CLEANUP**

The California Department of Fish and Game (Department) eradicated northern pike (*Esox lucius*) from Lake Davis in the fall of 2007. In response, special measures were

adopted to Sections 5.51 and 7.50(b)(53.8) to 1) temporarily increase the daily bag limit from five to ten trout per day, and 2) require any northern pike caught at Lake Davis, or its tributaries, to be immediately killed and returned to the tributary or lake, rather than be killed and turned into the Department.

These special measures are now expired and this proposal will remove them to clean up the regulatory language and reduce public confusion.

Amend Section 5.51, statewide northern pike restrictions.

- Remove expired regulatory language for clarity.

Amend subsection 7.50(b)(53.8), Davis Lake special regulations.

- Remove expired regulatory language for clarity.

#### OTHER REGULATORY CLEANUP

The Department is proposing additional minor revisions in the following areas of Title 14, CCR, regulations. While these problems are minor when viewed individually, they must be corrected to clarify regulations, reduce public confusion, align regulations, and improve regulatory enforcement.

Add Section 1.54, Inland Sport Fishing Districts.

- Place a reference to the trout and salmon sport fishing districts which are also used as boundaries in inland non-trout regulations to reduce public confusion.

Amend Section 2.09, Possession of Illegal Gear Regulations.

- Add canals to locations where illegal gear is not allowed to clarify enforcement jurisdiction.

Amend Section 2.30, Statewide Spearfishing Regulations.

- Add tilapia to the authorized species for the Colorado River District as it was lost during previous Title 14 updates.

Amend Section 3.00, Statewide Fishing Hour Regulations.

- Revise table in subsection (b)(D)(2) for clarity and regulation simplification.

Amend Section 5.15, Statewide Catfish and Bulhead Regulations.

- Correct a typographical error from a previous Title 14 update.

Amend subsection (e) of Section 5.60, Methods of Take for Statewide Reptile Regulations.

- Correct cross reference in the “methods of take” subsection to reduce public confusion.

Amend Section 7.00 and subsection 7.50(a), Clarification of District and Special Regulations Restrictions.

- Add clarification that gear restrictions listed in these sections apply to the take of all species of fish unless otherwise noted to reduce public confusion.
- Add clarification that restrictions on fishing methods and gear, fishing hours, and the use of bait contained in other section may also apply to reduce public confusion.

Amend subsection 7.50(b)(12), Arroyo Seco River Special Regulations.

- Remove reference to a footbridge in subsection (A) to reduce public confusion.

Amend subsection 7.50(b)(19.5), Big Bear Lake tributaries special regulations.

- Change the season closing date to the last day in February to cover leap years to reduce public confusion.

Amend subsection 7.50(b)(28.5), Burney Creek Special Regulations.

- Add total length to size limit to reduce public confusion and improve enforcement.

Amend subsection 7.50(b)(68.2), Feather River North Fork Special Regulations.

- Add Butte county to the county list for clarity and to reduce public confusion.

Amend subsection 7.50(b)(72.5), Guadalupe River Special Regulations.

- Remove redundant information from bag limit column. A zero bag limit indicated without a species will apply to all salmonids and fishing for other species is already allowed by subsection. This change will reduce public confusion and align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(84), Junction Lake and Tributaries Special Regulations.

- Correct a typographic error in the spelling of Mono County for clarity.

Repeal subsection 7.50(b)(88), Title 14, CCR, is a reserve section that contains duplication regulations.

- Repeal this subsection as it is a partial duplicate of Subsection 7.50(b)(87) to reduce public confusion.

Amend subsection 7.50(b)(170.5), San Mateo Creek and Tributaries Special Regulations.

- Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(171.6), San Margarita River and Tributaries Special Regulations.

- Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(181), Sonoma Creek and Tributaries Special Regulations.

- Correct cross reference to Section 8.00(b) to reduce public confusion.

Amend subsection 7.50(b)(187.5), Stevens Creek Special Regulations.

- Remove redundant information from bag limit column. A zero bag limit without a species shown will apply to all salmonids and fishing for other species is already allowed by subsection. This change will reduce public confusion and align the regulatory language of this subsection with the other special regulations.

**The Fish and Game Commission adopted the proposed regulations at its December 10, 2009 meeting.**